

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,
4 v. 18 Cr. 319 (SHS)
5 CHRISTIAN PABON,
6 Defendant.

7 -----x Trial
8 New York, N.Y.
9 May 2, 2022
10 9:50 a.m.

11 Before:

12 HON. SIDNEY H. STEIN,
13 District Judge
14 and a Jury

15 APPEARANCES

16 DAMIAN WILLIAMS
17 United States Attorney for the
18 Southern District of New York

19 BY: ADAM S. HOBSON
20 RUSHMI BHASKARAN
21 ELIZABETH A. ESPINOSA
22 Assistant United States Attorneys

23 ELIZABETH E. MACEDONIO, P.C.
24 Attorneys for Defendant

25 BY: ELIZABETH E. MACEDONIO

26 ROTHMAN, SCHNEIDER, SOLOWAY & STERN, LLP
27 Attorneys for Defendant

28 BY: JEREMY SCHNEIDER

29 Also Present: Emily Abrams, Paralegal Specialist, USAO
30 Dylan Schneider, Defense Paralegal

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1 (Case called)

2 THE DEPUTY CLERK: Counsel, please state your names

3 for the record.

4 MR. HOBSON: Good morning, your Honor. Adam Hobson,
5 Elizabeth Espinosa, and Rushmi Bhaskaran for the government.

6 We are also joined by our paralegal Emily Abrams.

7 THE COURT: Please be seated in the first row.

8 MS. MACEDONIO: Good morning, your Honor. Elizabeth
9 Macedonio and Jeremy Schneider for Mr. Pabon, and also present
10 at our table is Dylan Schneider the paralegal who is working on
11 the case.

12 THE COURT: And the defendant.

13 MS. MACEDONIO: And the defendant.

14 THE COURT: Please be seated. You may be seated in
15 the courtroom.

16 And I take it those are the civilian clothes that you
17 want the defendant to be in, is that correct?

18 MS. MACEDONIO: Yes, your Honor.

19 THE COURT: All right. Welcome.

20 We are told the jury will be -- the venire will be
21 available to us at around 10:00. As soon as they are ready,
22 they will call my deputy and we will bring them up. We are
23 going to sit them evenly spaced in the courtroom.

24 I am going to ask those individuals who are seated in
25 the back now in the courtroom -- it's a public trial. You are

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1 certainly more than welcome to be here. But I am going to ask
2 that you sit in the benches against the wall in the back, okay,
3 because we are going to seat the venire in the seats in the
4 front. So those of you who are in the courtroom now, once the
5 venire comes up, I am going to ask that you sit in the benches
6 against the wall in the back.

7 I have the list of places and potential witnesses from
8 the government. I take it that the defense has no additional
9 names and places.

10 MS. MACEDONIO: That's correct, your Honor, no
11 additions.

12 THE COURT: So I will list those. I will do the *voir*
13 *dire*. I have certainly read what you want me to put in, and I
14 have described how I pick a jury. I think we are all set.

15 Because the parties disagree on whether or not the
16 venire should be asked whether or not they are vaxed, I'm not
17 going to ask that, the question.

18 I received the notice from the government that they
19 are dropping Count Three, so when I describe the indictment, it
20 will just list Count One and Count Two. And I take it the
21 proposed verdict form from the government and the redacted
22 indictment should reflect that fact accordingly.

23 We are just going to wait now. I will step off the
24 bench unless there is anything I can do for the parties. When
25 they come up, we will proceed to jury selection. We will

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1 certainly try to have this jury chosen as expeditiously as
2 possible.

3 All right. Thank you.

4 (Recess)

5 (Continued on next page)

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(A jury of twelve and three alternates was impaneled and sworn)

THE COURT: Ladies and gentlemen, how we're going to proceed for the balance of the afternoon is as follows:

You've now been sworn in as jurors. I'm going to give you some preliminary instructions about how you should comport yourself over the next two weeks, and then I'll give you a break so you can refresh yourselves. My deputy will take you into the jury deliberation room here, where it's more comfortable.

We do require that everybody keep their masks on while they're in this building. You can take it off, take your mask off if you're eating or drinking. There will be space in the jury deliberation room for you to relax. Please keep yourselves socially distanced in there as well with your mask on except if you're drinking or eating. And this is where you'll assemble tomorrow morning, but I do wish to give you some preliminary instructions.

I'm sorry. I'm going to give you these instructions. You'll take a break and refresh yourselves, and then you'll come back and we'll hear the opening statements of the lawyers. All right? And then I'll dismiss you until tomorrow morning.

First of all, don't take anything that I say or do during the trial as indicating what your verdict should be. As I've told you, you decide the facts. I decide the law. We

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that, you'll know that as well, because they'll read the stipulation to you. They'll say, ladies and gentlemen of the jury, the government and the defense have agreed that the following is true, and then they'll say it. And I'll point it out to you as well.

Again, those are the three ways evidence comes in: Testimony of witnesses on the stand; documents and other things I admit into evidence; and stipulations of the parties. Now, there are three ways evidence comes in, but there are two different types of evidence. One is direct evidence and one is circumstantial evidence.

Direct evidence is simply evidence by somebody of what that person saw, heard, or did. They have direct evidence. They say on the witness stand: I saw this; I saw this person do that to that person; I heard this person say that; I did this; I gave this to that person, whatever it is. That person has direct evidence to give you. That's direct evidence.

The other type of evidence is circumstantial evidence. Circumstantial evidence is very simple, ladies and gentlemen. It's just evidence from which you are asked to infer the existence of another fact. The example that I always give -- in fact, I can remember somebody said they were on a jury here in 2005, so I'm sure I gave the same example then. I don't know if that person is on the jury now or not, but it's a fairly standard example.

have totally separate jobs. I may be taking notes here. I may be talking with my clerk or my deputy. I have other cases and sometimes emergencies arise in those other cases. I may be dealing with those other cases or I may not. But whatever I'm saying to my staff, it doesn't matter, and it's not part of your deliberations. Your deliberations are to be based on the evidence in this courtroom.

The evidence comes in three different ways. It comes in through the testimony of witnesses, who will sit there. By the way, a witness can take his or her mask off, and the lawyer who is speaking to you from that podium can take his or her mask off and I can take my mask off. Apart from that, please keep your masks on.

Evidence comes in three ways. One is from witnesses; you'll see that. One is from documents and other things that are received into evidence, and you'll know that too, because a lawyer will move the admission of something and I will say admitted, or not, whatever the answer is. But you'll see documents and other things. Sometimes objects or materials will be admitted in evidence. So that's the second way you'll have evidence presented to you.

The third way evidence comes in here is by stipulations, and stipulations are simply agreements by the parties that certain facts are true. If the parties have decided that a certain fact is true and have stipulated to

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Assume that the drapes are drawn, as they are now, or that the blinds are down. Assume you can't see outside. Assume somebody walks into the back of the courtroom and they have a wet umbrella. You have direct evidence of a wet umbrella. You can see it. You are entitled to infer from the existence of that wet umbrella that it's raining outside. That makes sense, right? The wet umbrella is circumstantial evidence of the fact that it's raining outside. That's all circumstantial evidence is. It's a fact from which you can infer another fact, and it's a very logical inference for you to make from the fact of a wet umbrella to another fact that you don't have direct evidence of -- namely, that it's raining outside.

Now, remember, that person may have put the umbrella under a faucet, so it may be that that inference is incorrect. Maybe it's not raining outside. Or maybe it's raining outside, but that's not how the umbrella got wet. There are all kinds of possibilities, but it certainly is a logical inference for you to make from the fact of a wet umbrella, to think that it's raining outside. It's not the only possible inference, but it's certainly a logical inference.

The law does not put any more weight on direct evidence than circumstantial evidence. The law does not put more weight on circumstantial evidence than direct evidence. It's you who puts the weight on the evidence. You can put any

weight on any piece of evidence you believe, whether it's direct or circumstantial. You can reject any piece of evidence if you don't believe it. Now, for the pieces of evidence you accept, you decide how much weight to put, if any, on that piece of evidence. The law doesn't weight direct versus circumstantial. You do all that. Why? Because your job is to decide what the facts are. That's why. You determine which of the witnesses to believe and who not to believe and of those you believe, what part to believe, what part not to believe.

Now, at times during the trial, I may sustain objections. You've all seen this on TV, but welcome, this is real life. Let me tell you how this work, and you don't have to memorize this. You'll see it play out.

There's a witness on the stand. The lawyer will ask the witness a question. The other lawyer stands up and says, "I object." That means I then have to do my job. Remember? Because that means the lawyer raised a legal issue, and legal issues are my job. When the lawyer says "I object," what the lawyer's saying is that, "your Honor, I don't believe that is a legally permissible question; in other words, I don't believe that question is a proper one under the law." And I have to decide whether it is or not. And if I decide that it is a proper question, I will say "objection overruled," and the witness will then answer the question.

And you don't have to memorize this. Don't worry.

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mention other things I admit, and stipulations of the parties. The questions of the lawyers are not evidence. So if there's a question asked and there's no answer because I don't allow an answer, because I sustained the objection, you can't take anything from that interchange. And in fact, I'm directing you you can't draw any inference from any unanswered question. OK? Just because a lawyer asks a question, if I don't allow it to be answered, you can't think that you know what the answer is.

OK. Your decision has to be made solely on the evidence before you, and again, if the witness hasn't answered anything, there's no evidence.

How do you decide who to believe and who not to believe? And we'll go over this at the end of the trial. I can't give you any magic formula. I just can't. There are no rules that I'm aware of. Very often psychologists try to propound these rules. I don't have much faith in them. What I can tell you is, because I know this as a fact, you decide every day as you go about your business who to believe and who not to believe. You decide how much weight to put on what somebody's telling you. You do that when talking to family. You do when you're buying a newspaper. You do that when deciding what fruit to buy.

Every day you are deciding who to believe and who not to believe and how much weight to put on what people are telling you. Whatever those rules are that you use in your

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And if I believe the question is an improper one, one that should not be asked under the law, I will say "objection sustained." That means that lawyer has to go on to another question. That means that witness can't answer that question. Is that fairly clear?

OK. Now, what sometimes a lawyer will ask a question, another lawyer will say "I object," and I'll sustain the objection, but nonetheless, the witness has answered. That happens because the witness doesn't care about this legal stuff; the witness is trying to answer the question. So the witness may have answered even though I sustained the objection. In that event, I probably will direct -- I will direct you to disregard the answer of the witness. OK? And in that event, you must disregard the answer of the witness. Again, you'll see how this works.

Now, let me give you an example here. Let's assume the lawyer asks the witness a question and the other lawyer stands up and says, "I object," and I sustain the objection. What evidence do you take away from that exchange?

The answer is none. Right? The questions of the lawyers are not evidence. In fact, anything these lawyers say is not evidence, just like anything I say is not evidence, ladies and gentlemen. You must accept the legal rulings I make and the directions I give you, but I'm not giving evidence here. Remember, evidence is statements of witnesses, not to

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everyday life use here, ladies and gentlemen. Use your common sense. Use your life's experiences. Use your good judgment. That's the best I can give you. OK?

I often tell juries about when I first started out as a judge, I attended a conference of two or three days, the branch of the judiciary that handles judicial education. It's a branch, actually, of the Administrative Office. And there were psychologists with these electronic clickers, and we had people acting as actors and we had to click as to whether we believed them or not, and there were graphs on the board, on the front, saying who was right and who was wrong, and some were making things up and some weren't. And as I say, psychologists lectured us what they thought were the rules. And what I always say is, at the end of the two or three days, I learned absolutely nothing, that there are really no rules. Use your common sense. Use your life's experience. That's the best guide here. Use your good judgment in deciding who to believe and who not to believe.

All right. You know what the lawyers say is not evidence. You know what I say is not evidence. Anything you hear when court is not in session is not evidence. All right? The only evidence is what happens when you're all here, when we've started the jury trial at the beginning of the day. That's what the evidence is. If you hear or see something outside of this courtroom that's said or done by one of the

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1 lawyers or one of the witnesses or the defendant, that is not
2 evidence, and I want you to, as I said, have no contact with
3 them.

4 If for any reason you do hear something that's said by
5 one of the parties or one of the witnesses or one of the
6 lawyers, I want you to tell my deputy and she'll tell me, and
7 then we'll deal with it. But right now I just want you to have
8 nothing to do with them. Remember, I told you that I was
9 instructing the lawyers and the parties not to greet you in the
10 elevator.

11 Now, sometimes you'll get into the elevator at the
12 beginning of the day or end of the day and you'll nod, somebody
13 looks familiar, and say hi. I understand that. Try not to do
14 that, but what I'm talking about is any substantive contact
15 between the parties. If there is any, I need you to report
16 that to my deputy.

17 By the same token, you must not do any research
18 outside of the court -- or while in the court, for that matter.
19 Just listen to the testimony. I don't want you going to any of
20 the locations that are mentioned. I don't want you going on
21 the internet to look up any of the people or events that there
22 may be testimony about. You must not do that. All right?

23 By the same token, so just listen to what happens in
24 court; I don't expect there to be any publicity about this
25 case, but there may be. You never know what the newspapers

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1 decide to write about, but if you do see anything or hear
2 anything, if it's on the radio, just turn the dial. If it's in
3 the newspaper, just turn the page. If it's on the television,
4 turn the dial. I guess people don't turn the dial anymore.
5 They click, so click your clicker. And then if it was anything
6 substantive, please tell my deputy the next morning, and we'll
7 deal with it. Don't do any research. Don't listen to any
8 publicity here. I'm not expecting it, but just in case, I'm
9 telling you not to listen to it. Turn away from it.

10 And don't do any social media typing. All right? No
11 Twitter, no Facebook. There have been substantial problems
12 created in other trials by people friending other people or
13 reaching out for a witness or, for that matter, another juror
14 or one of the lawyers. Don't go on social media. Don't look
15 for anything having to do with this trial, what anyone is
16 saying, and don't do any research.

17 Next, don't talk to each other about this case and
18 don't talk to anyone else about the case. Now, that may sound
19 strange, but the reason is I want you to keep an absolutely
20 open mind until after all the evidence is in, until after I've
21 instructed you on the law, until after you've heard the
22 summations, until after you've gone back to the jury room and
23 I've directed you to begin your deliberations. Until then I
24 want you to keep an open mind. I really would appreciate it.
25 In fact, I direct you not to talk with each other about the

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1 case and not to talk to your family members. I know that's
2 hard, but what I would appreciate is if you would tell them
3 you're on a case, a criminal case, and that the judge has asked
4 that you not talk about it until it's over. Then you can say
5 whatever you want to your family, except I don't want you to
6 tell them what's done in the jury room during your
7 deliberations. But the idea is keep an open mind.

8 My deputy, when you start hearing testimony, will pass
9 out notebooks for you to use if you wish -- you don't have
10 to -- and we'll put your juror number on it, and my deputy will
11 collect it at the end of each day and keep them in a safe place
12 and hand them out again the next morning. Again, you sure
13 don't have to use them, but you can write in it whatever you
14 like.

15 What I am directing you to do, however, is keep
16 whatever you write in those books to yourself. You can use it
17 to refresh your recollection if you wish, but I don't want you
18 in the jury deliberations to go to another juror or the whole
19 jury itself and say: "Look, I know this is what happened.
20 It's because I wrote it down." Right? In fact, there are
21 plenty of studies that show just because something is written
22 down doesn't make it true. Those studies also show that people
23 tend to believe something that's written down more than if it's
24 not written down. So to avoid that, if you do write something
25 down, just keep it to yourself. But you're certainly under no

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1 obligation to write anything down. Really it's for your
2 convenience.

3 At the end of the trial, when you start your
4 deliberations, you'll have the ability to see any or all of the
5 evidence that you want, and you'll have the ability to have the
6 court reporter read back evidence, testimony that was given if
7 you want, and I'll explain all of that. It takes time. It's
8 certainly something we could for you. Don't worry about that
9 now. We'll deal with that at the end of the trial. You don't
10 have to memorize anything here.

11 The idea behind all of these rules is to have a
12 verdict here that's rendered on the basis of your independent
13 evaluation of the evidence. And it's important that everybody
14 keep an open mind until you've heard all the evidence and the
15 summations of the lawyers.

16 Remember, this is a criminal case. Mr. Pabon has been
17 charged with two federal crimes in an indictment filed by a
18 grand jury. You know an indictment is simply a description of
19 the two charges. It's not evidence of anything, and Mr. Pabon
20 has pled not guilty to the two counts in this indictment. He
21 denies committing the crimes set forth in those two counts, and
22 therefore, he is presumed innocent. And the government has the
23 burden of proving him guilty beyond a reasonable doubt on every
24 element of each of those two counts before a jury can return a
25 verdict of guilty against him. And I'll go through what the

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elements are at the end of the case.

Now, what's going to happen?

One lawyer for each side will, after the break, give their opening statements. The order of opening statements is set by law. First, the government goes and then the defense. There will be one lawyer from each side. They will tell you what they think the evidence is going to show. And remember, what they say is not evidence itself. They're going to tell you what they think it will show.

Guess who decides what it does show? You, obviously, not them. You. Listen to what they have to say, and then you'll be able to see whether or not you agree with what their position is.

Then the government will present its first witness who will testify, and if there is time today, in fact, when this concludes today, then the defense will decide whether it wishes to ask that witness what we call cross-examination questions. And then we'll go on to witness two and so forth, and then the government will rest. And then the defense will put on its case if it wishes.

Remember, the defendant is not obligated to prove anything, so the defendant does not have to put on any case at all. But if the defendant wishes to put on a case, he may, and if he does, the defense will put its witnesses on and the government will cross-examine those witnesses and the defense

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will rest.

Then the lawyers will give you closing arguments. So, too, just like the opening arguments, they'll tell you what they think the evidence did show. And so, too, just as in the opening arguments, you'll decide what the evidence shows. Then I'll give you the charge on the law, tell you what the law is. They'll sum up. I'll give you the charge, and then you'll start your deliberations.

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THE COURT: The result will be a verdict by you, which must be unanimous. Please don't make up your mind about the verdict until you have heard all of the evidence.

All right. Let's take a ten-minute break. My deputy will take you into the jury deliberation room. That's where you will come in in the morning. You will come into this room. Again, this is Courtroom 23A. I'm Judge Stein, 23rd floor. My jury assembly room.

Right now, refresh yourselves. Ten minutes, ladies and gentlemen. And it's easiest if you all come out here this side and come out in order. Just makes things more orderly. Thank you.

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(Jury not present)

THE COURT: Ten minutes.

MR. HOBSON: Your Honor, can we ask one question?

THE COURT: Yes.

MR. HOBSON: You said opening statements and you suggested only opening statements. Do you still want us to be ready with the witness?

THE COURT: Oh, I'm sorry. Yes, of course.

MR. HOBSON: We are still ready. I just wanted to make sure.

THE COURT: Yes. Absolutely.

(Recess)

THE COURT: What's the expected length of the first witness's direct?

MS. ESPINOSA: Your Honor, I would say approximately 45 minutes to an hour.

THE COURT: Okay. Thank you. We will try to finish the direct at least.

MS. ESPINOSA: Your Honor, before we get to that witness, we do plan to read two stipulations which should be fairly short.

THE COURT: Fine. That's all right.

To those who are observing the trial, feel free to sit anywhere back there. I just needed -- when I was choosing the jury, I just needed the venire in the front, but now you can

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1 sit anywhere there, anywhere on the other side of the bar.
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1 (Jury present)
2 THE COURT: You may be seated in the courtroom.
3 Ladies and gentlemen. I told you we were going to hear the
4 opening statements. I neglected to tell you that we are also
5 going to hear the first witness. So you will hear testimony
6 today. And I am also informed that there are a few
7 stipulations that will be read to you. So before the day is
8 out, you will see two of the ways evidence comes in—from a
9 witness and a stipulation.

10 I told you the order of openings is set by law. The
11 government goes first. And I have also told you what the
12 attorneys say in their openings is not evidence, but I do want
13 you to listen to what they have to say. The government opening
14 will be by Ms. Espinosa.

15 Ms. Espinosa.

16 MS. ESPINOSA: It was a nice fall evening in
17 Washington Heights. The sun was still up. Kids were playing
18 outside. A woman was pushing her baby in a stroller, and a man
19 named Orlando Rivera stood talking to people on the sidewalk:
20 None of them had any idea what was about to happen.

21 Four men, gang members, walked up to the street
22 corner, hunting for members of a rival gang. Two of the men
23 pulled out guns and opened fire. As Orlando dove for cover and
24 people ran for safety, the two men fired at least 15 shots.
25 They hit three people—a young man, a teenaged girl, and

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M522Pab3 Ms. Espinosa - Opening

1 Orlando.
2 After spraying bullets across the sidewalk, the gang
3 members turned and ran away. The young man and the teenaged
4 girl survived, but Orlando, an innocent bystander, who just
5 happened to be in the wrong place at the wrong time, was
6 killed. Orlando died after being shot in the back while he
7 tried to get away. He was 42 years old.

8 That is why we are here today, because that man,
9 Christian Pabon, the defendant, was one of the shooters who
10 opened fire on a busy street. We are here because the
11 defendant was a gang member who shot two people and murdered

12 Orlando.

13 So what will the evidence in this trial show?

14 You will learn that the defendant and the men who went
15 with him to the shooting that day were members of a street gang
16 known as the 200. The 200 controlled turf on Dyckman Street,
17 originally known as 200th Street at the northernmost tip of
18 Manhattan.

19 Members of the 200 worked together to protect their
20 territory and to make money by committing crimes. The gang
21 sold drugs all along Dyckman, their turf, and they carried guns
22 to protect that turf from rivals.

23 In addition to selling drugs, the 200 made money
24 through other crimes. For years, they worked together to steal
25 from pharmacies, to rob other drug dealers, and to rob people

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M522Pab3 Ms. Espinosa - Opening

1 of their jewelry, often at gunpoint.

2 You will also learn that the 200 had violent disputes
3 with rival street crews from nearby neighborhoods, including a
4 gang on 193rd Street. 200 members fired guns at those enemy
5 gangs. Sometimes they fired those guns in the middle of
6 crowded streets, regardless of who might get caught in the
7 crossfire.

8 The 200 terrorized that neighborhood in northern
9 Manhattan. The defendant held a respected position in the 200.
10 He was a shooter. His fellow gang members knew that the
11 defendant always had a gun on him, and they knew they could
12 count on him for any job that could get violent. His nickname
13 in the gang even advertised it. He called himself Banga, like
14 the bang of a gun. And he lived up to that name.

15 You will hear about multiple gunpoint robberies the
16 defendant helped his fellow gang members commit, multiple times
17 he pulled out guns, multiple shootings the defendant did with
18 the gang. A 200 earned respect within a gang by committing
19 violence, and the defendant had that respect, lots of it.

20 So in the fall of 2014, when the 200's feud with the
21 enemy gang on 193rd Street was heating up, it was natural for
22 the defendant, the gang's shooter, to step up and attack those
23 rivals.

24 Which brings us to the murder of Orlando.
25 On the evening of October 2, 2014, the defendant and

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other members of the 200 went looking for enemy gang members to shoot. The 200s drove a van into their rivals' territory. The defendant and three others got out of the van and walked up the street. When they got to the corner, the defendant and another 200 member opened fire to shoot at one of their rivals. But the street was full of people, and instead of killing their intended target, they killed Orlando, an innocent man who was just enjoying a nice fall evening outside.

After the murder, the defendant and his fellow gang members turned and fled the scene. They got back into the van, drove off, parked it in a nearby parking lot, and went home, leaving Orlando to die of his wounds.

The defendant was proud of this murder, and he took credit for it. The murder solidified his reputation as a shooter in the 200, a person to be respected. If you mess with him or the 200, he wouldn't hesitate to respond with violence. And you will learn that the power of the 200 as a whole increased as a result of the murder. Their territory expanded and more people joined the gang.

You will also learn that the defendant took steps to make sure he got away with murder. Just days after the murder, the second shooter, a fellow 200, was arrested. The defendant was worried the police were coming for him next, so he changed his appearance.

At the time of the murder, the defendant wore his hair

M522Pab3 Ms. Espinosa - Opening

You will also see photos and videos of the defendant and his fellow gang members bragging about their membership in the 200. You will see surveillance videos from the evening of the murder the defendant committed. The videos will come in bits and pieces and from different angles but, taken together, they will show you what happened that evening.

You will see the shooting. You will see the gang members walk up to the street corner, where two of them pull out guns and fired down the street before running away. And you will see a van pull into a nearby parking lot just a few minutes after the murder. You will see the same men get out of the van and walk off.

You will see crime scene evidence, including the shell casings and fired bullets that law enforcement recovered from the scene of the murder. You will hear that the bullets were from two different guns—one for each shooter. You will see evidence found when NYPD searched the van and the second shooter's apartment. You will hear from the NYPD detective who responded to the murder scene. He will walk you through the crime scene evidence and the surveillance video recovered during the investigation.

you will hear from the medical examiner who performed Orlando's autopsy, confirming he was killed by a bullet.

You will also hear from three cooperating witnesses who were members or associates of the 200 itself. They will

long. But once he realized he might have been caught by surveillance cameras, the defendant cut his hair short so he wouldn't be recognized as one of the shooters. And when he became worried that the second shooter might give him up, he left town for a while, so the police wouldn't find him. He tried to lay low until he found out that the other shooter had chosen to plead guilty and take the fall for the murder.

But what the defendant didn't count on is that the investigation would keep going, and that one day he would be sitting here in front of all of you. Taken together, the evidence will show that the defendant was a member of the 200 and committed multiple crimes on behalf of the gang, including the murder of Orlando on October 2, 2014.

As a result of his conduct, the defendant is charged with two crimes—racketeering conspiracy, meaning he agreed to commit crimes with the 200, and participating in the murder of Orlando Rivera.

How are we going to prove that the defendant is guilty of agreeing to commit crimes with the 200 and murdering Orlando? You will see and hear different types of evidence in this trial.

You will see posts from the defendant's Instagram account confirming his membership in the gang. His Instagram user name was PrettiestGangsta200, advertising his membership in the 200 gang.

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give you an inside look at the gang's operation. They will tell you that the defendant was a member of the 200 and committed crimes with the 200. They will explain how the defendant was a shooter, the gun guy, and that he was also involved in armed robberies and drug dealing. All three of the cooperating witnesses will also tell you that, after the murder, everyone in the 200 talked about how the defendant was one of the shooters that evening. Two of these cooperating witnesses even talked directly to the defendant about the murder. And the defendant admitted to them that he did it. They heard it from his own mouth. Just days after the murder, the defendant told an associate of the 200 that it was a bullet from the defendant's own gun that killed Orlando. And he told one of the 200 founders the same thing more than a year later.

Now, I want to say a word about these cooperating witnesses. They are testifying at this trial because they have committed a lot of crimes. They were involved in the 200, just like the defendant. They were gang members who engaged in serious violence, just like the defendant. They have taken responsibility for those crimes and pled guilty. They are able to testify about the defendant's crimes because they were there, committing crimes right alongside him. And they are hoping for lighter sentences in exchange for cooperating with the government. We are not asking you to like these witnesses or approve of what they have done. The only question to ask

yourself is whether they are telling you the truth.

So when you consider their testimony, please look at it closely and consider it carefully. If you do that, you will see how each witness's testimony fits together with each other, with all of the other evidence in the case, including the Instagram evidence, the crime scene evidence, the surveillance videos, and the other witnesses. Taken together, this evidence will prove to you beyond a reasonable doubt that the defendant is a gang member and that he murdered Orlando Rivera.

Soon you will begin to hear and see this evidence for yourselves, but before I sit down, I would like to ask you to do three things during this trial. First, pay close attention to the evidence; second, follow Judge Stein's instructions on the law; and, third, use your common sense, the same common sense that you use every day to make all sorts of decisions in your own lives.

If you do these three things, you will reach the only verdict that is consistent with the evidence and the law—that the defendant, Christian Pabon, is guilty.

THE COURT: Thank you, Ms. Espinosa.

We now will hear the opening statement of the defense.

Ms. Macedonio.

MS. MACEDONIO: Thank you, your Honor.

Death is tragic, no matter what the circumstances are, no matter the age of the person or the reason for death. Death

is tragic whether the person is old or young, healthy or suffering from illness. No matter what the circumstances are, we always mourn the loss of life.

In this case, we truly have a tragedy. A young man, Orlando Rivera, was shot dead on a New York City street when two gun men opened fire. It was October 2, 2014. You will see a video of people on the street talking with each other when suddenly shots rang out. An innocent bystander was killed and two others were wounded.

There is, perhaps, no greater tragedy than a life cut short. There is no dispute about the tragic nature of this murder, and no one—no one—is asking you to condone violence or justify a murder.

The question that you need to decide is whether my client, Christian Pabon, is responsible for the death of Orlando Rivera.

Ladies and gentlemen, you may have learned, my name is Elizabeth Macedonio, and I, along with Jeremy Schneider, have the pleasure of representing Mr. Pabon in this case.

The indictment in this case charges Mr. Pabon with two counts. Count One charges Mr. Pabon with a conspiracy to commit racketeering. Count Two charges Mr. Pabon with murder in aid of racketeering.

There are two main issues you will need to decide—first, was Mr. Pabon a member of a group called 200;

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and, second, as part of his association with 200, did he shoot and kill Orlando Rivera? The answer to these questions is no, and therefore the government will simply be unable to prove its case against him.

So you have learned what the indictment charges, but the indictment, as you have heard, is not evidence. The indictment merely spells out the charges against Mr. Pabon, and now it's the government's burden, the folks at this table, it's their burden to prove the charges that they have alleged against my client, Christian Pabon.

Ms. Espinosa, in her opening this afternoon, told you what she believes the government will prove in order to convict. But the government must prove these charges beyond a reasonable doubt, as Judge Stein has told you.

And Mr. Pabon has no burden at all. As he sits here today, as he sits in that seat right now, he is presumed to be innocent. He starts this trial with a clean slate. He is an innocent man now and he remains an innocent man unless, if ever, the government can convince 12 of you beyond a reasonable doubt that he is guilty.

So after hearing the nature of this case, you might have had a negative impression. You are required as a juror to put that impression aside and to begin this case with the recognition that Christian Pabon is innocent.

Let's talk a little bit more specifically about what

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you are going to hear. You should note from the beginning that you are not going to hear from anyone who participated in this murder. The government argues that five men were involved. Not one of those men will take the stand in this case.

But you will learn, however, that someone else has already pled guilty to this crime. You will hear from law enforcement who responded to the scene and gathered evidence. You will see some video footage. Carefully evaluate this testimony and review the videos. While doing this, remember, you are not going to be asked to decide if Orlando Rivera was murdered. The question that you have to decide is if Christian Pabon was the triggerman.

You are also going to hear a great deal of evidence regarding Mr. Pabon's social media posts and his nickname Banga. It's not a nickname that I would have chosen for myself, but it's not uncommon for people to have nicknames or social media accounts with names that have absolutely no bearing on reality.

I could open an Instagram account calling myself The Best Attorney in New York City. That doesn't mean it's true. I could have an Instagram account that says Never Lost a Case or Killer Cross-examination Guaranteed. But this wouldn't mean that that's true either.

You don't have to like Mr. Pabon's social media posts, but you can't convict him based upon that alone.

As Ms. Espinosa just told you, the government is going to be calling three cooperating witnesses. You will learn that these men are in jail because they have committed a lifetime of crimes. One is worse than the next. All of them claimed to have some type of interaction with Mr. Pabon after the murder and that they then discussed the murder with other people.

These witnesses, I submit to you, are professional liars. They lie for a living. Not one of them has ever held a job. However, they have had a life filled with luxury vehicles and very expensive jewelry that they have obtained by viciously stealing from other people and each other.

They are truly the worst of the worst of society. Walking crime waves. They sell drugs. They burglarize pharmacies. They commit home invasions, armed robberies, kidnappings, and something that they call breaking. Breaking, you will learn, is a very lucrative crime in which these men would steal from other drug dealers, and so what they would do is, they would either sell fake drugs to drug dealers or they would buy real drugs from drug dealers with fake money. That's what they called breaking.

In order to do this, you have to be very convincing. You have to get the person who you are buying or selling from close to you. You have to make that person trust you. In other words, you have to be a really good liar. Because we are not talking about small transactions. We are not talking about

a transaction with someone who would come up and buy from them in a breaking transaction enough drugs for personal use. Oh, no. We are talking about kilogram transactions in these breaking transactions. They were passing off large quantities of fake drugs for thousands and thousands of dollars. They became so good at, it that they actually ran out of victims in New York, and so they would travel to North Carolina, South Carolina, Georgia, Pennsylvania, to cultivate new victims so that they could continue their scam.

Not only did they do this for years, but they were smart enough to know that they could get away with it because who could complain? Certainly the drug dealer couldn't go to the police and, you know, complain that someone had just stolen all of his drugs, giving them fake money.

They made hundreds of thousands of dollars as professional scam artists. They are violent criminals, men who have constant access to guns and weapons. You are going to hear how they terrorized, kidnapped, tied up, and assaulted innocent people, business owners repeatedly. They would burn their victims with cigarettes and tase them. They terrorized the people in the buildings they lived in in their own community and would have high -speed chases with the police, and at some points even shot at the police. They had special tools to open doors when they committed their burglaries, and they would sometimes actually even get into buildings from the roof

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or from the storefront nextdoor, and then break down the wall in between.

They have police scanners to avoid detection, and they have committed so many crimes that they can't even tell you the number. They don't even remember. That's how many crimes they have committed.

They all believe that the law just doesn't apply to them. Arrests and incarcerations don't deter them, not in the least. They smuggle drugs into jail. They sell drugs in jail. They use drugs in jail. They commit assault while they are in jail. No one is outside of what they want to get. They will use anyone, even their own mothers. Truth and honesty are not part of their fabric. They simply are unable to tell the truth because they are not grounded with a sense of right and wrong. They say or do whatever the moment requires to get what they want.

These are the three witnesses that the government is going to ask you to rely on to convict my client.

So what do they want in this case? They want a letter. They want a letter written by the prosecutors at this table, and this letter will outline for their sentencing judge their cooperation, their testimony in this case. It's called a 5K letter. It's a letter that allows the judge who sentences them to go under the mandatory minimum sentence that they would otherwise have to receive. They are all hoping—all of them,

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all three of them—to get a sentence of time served right after their testimony in this case. What they want is to go home and to start committing crimes again.

They all pled guilty pursuant to cooperation agreements. This means that they are now part of the government's team. These cooperation agreements spell out within the agreement, if you commit another crime, we are going to rip up your cooperation agreement and you are going to be stuck with your mandatory minimum sentence. The problem is, it's not enforced. These three individuals are just continuing to commit crimes while they are in jail. They have been given free rein to continue to commit new crimes while using the government as a shield.

When the government is finished with its presentation of the evidence, I ask you to reflect. Ask yourself the following question: Would I trust these people if they approached me in my ordinary life? If the answer to that question is no, then you should not trust them here just because they have been called as a government witness. They are going to try to prop them up. They are going to try and dress them up. But you will be able to see who they really are.

Ask yourself: Do I have to base my verdict on the testimony of men who are incapable of telling the truth? Does all of this add up for me? Are they asking me to guess? Are

1 they asking me just to assume Mr. Pabon is guilty simply
2 because murder is so tragic? Guessing and speculation is not
3 proof beyond a reasonable doubt, and there will be no hard
4 evidence that Christian Pabon shot and killed Orlando Rivera,
5 zero. And the reason for that is simple: He did not do it.

6 The role of the jury, your role, is to decide the
7 facts of this case. You, as the jury, are the sole judges of
8 the facts. What you are required to do and what you swore to
9 do this afternoon when you became members of this jury is to
10 give this man a fair trial. In order to do that, you must
11 listen carefully to all of the evidence. Keep an open mind
12 throughout the trial and don't make a decision regarding guilt
13 or innocence until the trial is over.

14 I started my opening statement today by saying death
15 is tragic. That is something we can all agree upon. When
16 people are murdered, society wants justice, justice for the
17 victims, justice for the victims' families. But true justice
18 can only come with a fair and just verdict. True justice can
19 only come with a verdict based on evidence and not emotion.

20 At the conclusion of this case, Mr. Schneider will
21 present the defense closing argument. There is no question
22 that you will clearly see that the government has failed to
23 establish beyond a reasonable doubt that Christian Pabon is
24 guilty of the crimes he is charged with. So I ask you to
25 listen carefully to the evidence and that you get past the

1 tragic nature of this case, and that you give Christian Pabon
2 the fair trial that he deserves and that you would deserve if
3 you were sitting in his shoes.

4 Thank you.

5 THE COURT: All right. Thank you, Ms. Macedonio.

6 Ladies and gentlemen, you have not heard any evidence

7 yet, but that is about to change.

8 The government call your first witness.

9 MS. BHASKARAN: Your Honor, the government will start

10 by reading in some stipulations to the record.

11 THE COURT: All right, fine.

12 Remember, ladies and gentlemen, stipulations are a way
13 for evidence to come in. They are simply agreements between
14 the government and the defense that certain facts are true.

15 MS. BHASKARAN: Your Honor, the government will start
16 with Government Exhibit S1, a stipulation that has been agreed
17 to by the parties.

18 It is hereby stipulated and agreed that:

19 Government Exhibits 401 through 406 are true and
20 accurate recordings of 9-1-1 phone calls placed to the New York
21 City Police Department in the immediate aftermath of the
22 October 2, 2014 murder of Orlando Rivera.

23 Government Exhibits 401T, 402T, 403T, 404T, 405T, and
24 406T are true and accurate transcripts of the underlying 9-1-1
25 calls.

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1 It is further stipulated and agreed that the above
2 government exhibits and this stipulation may be received in
3 evidence at trial.

4 Your Honor, at this time, the government offers
5 stipulation S1, Government Exhibits 401 through 406, and
6 Government Exhibits 401T through 406T.

7 THE COURT: Admitted.

8 (Government's Exhibits S1 and 401 through 406 received
9 in evidence)

10 MS. BHASKARAN: Your Honor at this time the government
11 will play the aforementioned 9-1-1 calls. We have prepared
12 transcripts of the -- binders of the aforementioned transcripts
13 for the jury.

14 THE COURT: I gather the parties are admitting the
15 transcript as evidence? Is that what I gather?

16 MS. BHASKARAN: Yes, your Honor.

17 THE COURT: Do you have one for the Court?

18 MR. SCHNEIDER: Your Honor, can we just step up for a
19 second, please, just to clarify one thing if we may.

20 THE COURT: Don't open those binders yet, please.

21 (Pause)

22 MR. SCHNEIDER: Your Honor, I think the government
23 will make a record now, so we don't need to approach.

24 MS. BHASKARAN: Yes, your Honor. The government is
25 offering the transcripts as aids to the jury.

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1 THE COURT: All right. Ladies and gentlemen, it
2 sounds like that the government is going to play 9-1-1 tapes.
3 I am also informed, and you were at the same time, that the
4 government has prepared transcripts of those calls, but the
5 transcripts, I wish to inform you, are not evidence themselves.
6 They are simply aids to you. In other words, the evidence is
7 the call, the tape. The government has put what it believes is
8 on the tape, and you should read those as you are listening to
9 the tape. It's to help you understand the tape. But if for
10 any reason you think something that is on the call is different
11 than what's on the tape, it's the call that you should follow.
12 Does that make sense? It's the call that is the evidence. The
13 transcript is an aid to help you understand what's on the call.
14 Okay?

15 MS. BHASKARAN: Thank you, your Honor.

16 Ms. Abrams, if you could please play Government
17 Exhibit 401. The corresponding transcript is 401T.

18 THE COURT: Open your binders to 401T and you can
19 follow along.

20 MR. SCHNEIDER: Your Honor, I'm terribly sorry. I
21 think we need to come up for a second. I saw something we need
22 to address.

23 THE COURT: Quickly.

24 MR. SCHNEIDER: Thank you. As quickly as I can.

25 (Continued on next page)

(At the sidebar)
 THE COURT: I want an absolute minimum of sidebars, in other words, none. I don't know what this is about.
 MR. SCHNEIDER: I'm sorry, I would have -- to make it quick, I just noticed that the beginning of the transcript has the defendant's a/k/a "Banga." Your Honor had asked the government to redact the indictment without having the word "Banga" on the indictment.
 THE COURT: That's what I did for the indictment.
 MR. SCHNEIDER: The government did that. However, the transcript, the front of every page of the transcript has the cover page United States v. Christian Pabon, a/k/a "Banga." So I think that's a problem, given what your Honor -- I don't think they did it on purpose, but I don't think --
 THE COURT: I'm not going to -- I'm going to have this testimony go in now. What's the position of the government?
 MS. BHASKARAN: Your Honor, it was an oversight that it wasn't taken out of the first page, but the first page doesn't really have any substantive information on it. I believe --
 THE COURT: I understand, but the defense doesn't want that in the transcripts, Banga, Banga, Banga, Banga.
 MR. SCHNEIDER: I have no problem. I think we should go ahead. But my suggestion is they take the transcripts back at the end and just change the first page.

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THE COURT: Fine. I have no objection. Government?
MS. BHASKARAN: No objection.
 THE COURT: And when I say no sidebars, obviously if an emergency comes up, fine, but my intention is that any evidentiary issues be brought to my attention before the jury comes in or at the end of the trial day, not during the course of the trial, I mean while testimony is going on. I want this to come in as efficiently as possible.
Let's proceed.
(Continued on next page)

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(In open court)
 MR. HOBSON: Your Honor we have learned that the audio seems to be unplugged, so we are going to read a different stipulation in right now, not play the 9-1-1 calls, and then we will proceed to our witness.
 We would ask, with the Court's indulgence, tomorrow morning we will perhaps play the 9-1-1 calls.
 THE COURT: Maybe you can get it working while somebody else is coming in. What would you like to do now, sir?
 MR. HOBSON: We are going to read another stipulation, your Honor. All right. This is Government Exhibit S3.
 THE COURT: Just a moment. Somebody is giving a thumbs up. Does that mean we now have the audio?
 MR. HOBSON: Yes.
 THE COURT: All right.
 MR. HOBSON: We will go to the 9-1-1 calls.
 THE COURT: These things happen, ladies and gentlemen. It is technology. My own view is things were much easier when it was paper and pencil, but let's proceed.
(Audio played)
 MS. BHASKARAN: Ms. Abrams, if you could please play Government Exhibit 404. The corresponding transcript is 404T.
(Audio played)
 MS. BHASKARAN: Ms. Abrams, if you could please play

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Government Exhibit 402. The corresponding transcript is 402T.
(Audio played)
 MS. BHASKARAN: Ms. Abrams, if you could please play Government Exhibit 405. The transcript is 405T.
(Audio played)
 MS. BHASKARAN: Ms. Abrams, could you please play Government Exhibit 406. The transcript is 406T.
(Audio played)
 MS. BHASKARAN: Ms. Abrams, could you please play Government Exhibit 403, and the corresponding transcript is 403T.
(Audio played)
 MR. HOBSON: Your Honor, we are now going to read and introduce into evidence what's been marked as Government Exhibit S3, another stipulation.
THE COURT: Go ahead.
 MR. HOBSON: The parties have agreed to the following:
 At the scene of the October 2, 2014 shooting, the New York City Police Department recovered from the ground a Samsung flip phone with call number 917-557-7673. The flip phone was found at the corner of Fairview Avenue and Saint Nicholas Avenue in New York, New York.
 On October 2, 2014, the NYPD recovered a different Samsung flip phone, with call number 512-369-9927, from a maroon Chevrolet Astro Van, with New York license plate number

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1 EHY-1946. It was parked at a commercial parking lot at 21-23
 2 Hillside Avenue, in New York, New York.
 3 A New York State court judge issued warrants
 4 authorizing the search of both Samsung flip phones. If called
 5 to testify, a former paralegal at the New York County District
 6 Attorney's office would testify that in October 2014, in the
 7 normal course of business and consistent with her usual
 8 practice, she executed the review of the contents of the two
 9 Samsung flip phones and inputted the phones' contact lists into
 10 a spreadsheet.
 11 Government Exhibit 101 is the spreadsheet the
 12 paralegal created of the contact list from the Samsung flip
 13 phone recovered from the corner of Fairview Avenue and
 14 Saint Nicholas Avenue.
 15 Government Exhibit 102 is the spreadsheet the
 16 paralegal created of the contact list from the Samsung flip
 17 phone recovered from the search of the maroon Chevrolet Astro
 18 Van.
 19 It is further stipulated and agreed that the above
 20 government exhibits and this stipulation may be received in
 21 evidence at trial.
 22 Your Honor, at this time we offer Government Exhibit
 23 S3, Government Exhibit 101, and Government Exhibit 201 into
 24 evidence.
 25 THE COURT: Admitted.

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1 (Government's Exhibits S3, 101, and 102 received in
 2 evidence)
 3 MS. ESPINOSA: The government calls George Gill.
 4 And your Honor may we move the podium back?
 5 THE COURT: Turn it around, yes.
 6 GEORGE GILL,
 7 called as a witness by the government,
 8 having been duly sworn, testified as follows:
 9 DIRECT EXAMINATION
 10 BY MS. ESPINOSA:
 11 Q. Good afternoon, sir.
 12 A. Good afternoon.
 13 Q. Do you currently work?
 14 A. No. I do not.
 15 Q. Did you work somewhere previously?
 16 A. Yes, I did.
 17 Q. Where did you work previously?
 18 A. I worked with the New York City Police Department .
 19 Q. And why do you no longer work there?
 20 A. I'm retired.
 21 Q. How long did you work with the New York City Police
 22 Department?
 23 A. I worked with the New York City Police Department for 30
 24 years.
 25 THE COURT: Sir, if you could move the mic closer to

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1 your mouth or move yourself closer to the mic. Speak loudly.
 2 A. I worked for NYPD for 30 years.
 3 THE COURT: That's better, thank you.
 4 Q. What was your title when you retired?
 5 A. A detective second grade.
 6 Q. And where did you work when you first started at NYPD?
 7 A. Out of the academy, I was first assigned to the 25th
 8 precinct in East Harlem.
 9 Q. Were you subsequently reassigned to another precinct?
 10 A. Yes, I was, I was assigned to the 34th precinct.
 11 Q. Where is the 34th precinct located?
 12 A. Upper Manhattan.
 13 Q. Ms. Abrams, can you please pull up Government Exhibit 235
 14 for the witness and counsel or what has been marked as
 15 Government Exhibit 235.
 16 Sir, do you recognize the area shown in this map?
 17 A. Yes, I do.
 18 Q. Where is it?
 19 A. It's upper Manhattan.
 20 Q. Are you familiar with that area?
 21 A. Yes, I am.
 22 Q. Why are you familiar with that area?
 23 A. I worked there for 29 years.
 24 Q. Is this map a true and accurate representation of upper
 25 Manhattan?

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1 A. Yes, it is.
 2 MS. ESPINOSA: The government moves to admit
 3 Government Exhibit 235 into evidence.
 4 MR. SCHNEIDER: No objection.
 5 THE COURT: Admitted.
 6 (Government's Exhibit 235 received in evidence)
 7 MS. ESPINOSA: May we publish, your Honor?
 8 THE COURT: Yes.
 9 When the lawyers say "may we publish," it just means
 10 can the jury see it, so I have said yes.
 11 MS. ESPINOSA: Ms. Abrams, you can take that down now.
 12 Ms. Abrams can you please pull up what has been marked
 13 as Government Exhibit 234 for the witness, Court, and counsel.
 14 Q. Sir, do you recognize the area shown in this map?
 15 A. Yes, I do.
 16 Q. Where is it?
 17 A. Again, it's Washington Heights.
 18 Q. Are you familiar with the area?
 19 A. Yes, I am.
 20 Q. Why are you familiar with it?
 21 A. Again, I worked there for 29 years.
 22 Q. Is this map a true and accurate depiction of the area in
 23 upper Manhattan at Washington Heights?
 24 A. Yes, it is.
 25 Q. The government moves to admit Government Exhibit 234 into

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1 evidence.

2 MR. SCHNEIDER: No objection.

3 THE COURT: Admitted.

4 (Government's Exhibit 234 received in evidence)

5 MS. ESPINOSA: May we publish?

6 THE COURT: Yes.

7 MS. ESPINOSA: All right. Ms. Abrams, you can take

8 that down. Thank you.

9 BY MS. ESPINOSA:

10 Q. Detective, could you say again how long you worked in the

11 34th precinct?

12 A. 29 years.

13 Q. What titles did you have in the three-four?

14 A. When I was first assigned to 34th precinct, I was assigned
15 as a probationary police officer. On completing my two years'
16 probation, I was given the rank police officer. I was then
17 assigned to the detective bureau. After 18 months of
18 investigations, I was given detective third grade, and then six
19 years later I became detective second grade.

20 Q. Sir, briefly, what were your duties and responsibilities as
21 a detective?

22 A. I would investigate complaints filed with the uniformed
23 office. The patrolled services was referred to the detective
24 squad.

25 Q. In your career, approximately how many crime scene

1 investigations -- crime scenes did you investigate?

2 A. Between -- when I was in uniform and as a detective,
3 shooting and homicides, probably 500 scenes.

4 Q. I apologize, sir. Could you just clarify how many
5 shootings approximately did you investigate during your career?

6 A. Shootings were anywhere from 5 to 600.

7 Q. And approximately how many homicides did you investigate in
8 the course of your career?

9 A. Between my uniformed experience and as a detective, I would
10 say over 2 to 300, 2 to 300.

11 MR. SCHNEIDER: I'm sorry, your Honor. I couldn't
12 hear.

13 THE COURT: 2 to 300.

14 MR. SCHNEIDER: Thank you.

15 THE COURT: Is that correct, sir?

16 A. But that was not just in the 34th precinct. There were
17 other precincts I had to go to.

18 Q. Sir, turning your attention to October 2, 2014, were you
19 working that day?

20 A. Yes, I was.

21 Q. What shift were you working?

22 A. Working the 3:45 p.m. to 1:00 a.m.

23 Q. Did you respond to any calls that day?

24 A. Yes, I did.

25 Q. What type of call?

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1 A. We had a confirmed triple shooting.

2 Q. Where did the shooting take place?

3 A. In 1653 St. Nicholas.

4 Q. Ms. Abrams, can you please pull up what's been marked as
5 Government Exhibit 244 and show it to the witness, Court, and
6 counsel.

7 Sir, do you recognize the area shown on this map?

8 A. Yes, I do.

9 Q. Where is it?

10 A. Washington Heights.

11 Q. Are you familiar with this area?

12 A. Yes, I am.

13 Q. Is this a true and accurate representation of Washington
14 Heights?

15 A. Of this specific area within Washington Heights, yes, it
16 is.

17 MS. ESPINOSA: The government moves to admit
18 Government Exhibit 244.

19 MR. SCHNEIDER: No objection.

20 THE COURT: Admitted.

21 (Government's Exhibit 244 received in evidence)

22 MS. ESPINOSA: Ms. Abrams, please publish for the

23 jury.

24 BY MS. ESPINOSA:

25 Q. Sir, can you please point out the scene of the shooting on

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1 this map? I believe you should be able to circle it with your
2 finger.

3 A. (Witness indicates).

4 MS. ESPINOSA: And let the record reflect that the
5 witness has circled 1653 St. Nicholas Avenue.

6 Ms. Abrams, you can take that down.

7 THE COURT: I'm sorry. Put that back up.

8 MS. ESPINOSA: I apologize, your Honor. Your Honor,
9 shall I have the detective circle the area again?

10 THE COURT: No. I see it.

11 Move on.

12 BY MS. ESPINOSA:

13 Q. Sir, after you got the call, what did you do?

14 A. With other detectives, I responded to the scene.

15 Q. When you arrived at the scene, did you see any victims?

16 A. Yes, I did.

17 Q. How many victims did you see?

18 A. I saw three victims.

19 Q. What did you observe about their condition?

20 A. They were being treated by EMS for gunshots.

21 Q. And do you recall where you saw those victims?

22 A. Yes, I do.

23 Q. Where did you see them?

24 A. Two of the victims were in the courtyard of 1653, and a
25 third victim was around on the sidewalk more on the south side

1 of the building.

2 Q. Sir, if you could just keep your voice up and stay close to
3 the microphone, that would be helpful.

4 A. Sorry.

5 Q. Let's talk a bit about the types of evidence that you found
6 at the scene of the shooting.

7 Generally speaking, what types of evidence were
8 recovered?

9 A. We had ballistics evidence, cell phone.

10 MS. ESPINOSA: Your Honor, I'm now going to read a
11 stipulation between the parties, Government Exhibit S2.

12 It is hereby stipulated and agreed between the parties
13 that:

14 On October 2, 2014, a detective from the Crime Scene
15 Unit of the New York City Police Department, (the "CSU
16 detective") responded to the area of 1653 Saint Nicholas Avenue
17 in Manhattan to process the scene of the murder of Orlando
18 Rivera ("the scene"). Government Exhibit 601 is the ballistics
19 evidence that the CSU detective recovered from the scene which
20 was vouchered under NYPD Property Clerk Invoice Number
21 1000558841.

22 It is further stipulated and agreed that the above
23 exhibit and this -- I apologize Government Exhibit 602 is a
24 report prepared by New York City Police Department Detective
25 Salvatore LaCova on October 3, 2014, regarding his analysis of

1 Government Exhibit 601.

2 It is further stipulated and agreed that the above
3 government exhibits and this stipulation may be received in
4 evidence at trial.

5 The government moves to admit Government Exhibit 601,
6 602, and S2.

7 MR. SCHNEIDER: No objection.

8 THE COURT: Admitted.

9 (Government's Exhibits S2, 601, and 602 received in
10 evidence)

11 MS. ESPINOSA: Your Honor, may I publish 601?

12 THE COURT: Yes.

13 MS. ESPINOSA: And may we pass it?

14 THE COURT: No. Just walk in front of the jury.

15 Is that 601?

16 MS. ESPINOSA: 601. It's in two parts, your Honor.

17 THE COURT: All right.

18 BY MS. ESPINOSA:

19 Q. Sir, you referred to ballistics evidence a minute ago, do
20 you remember that?

21 A. Yes.

22 Q. What is ballistics evidence broadly speaking?

23 A. Parts of a bullet, shell casing --

24 Q. What are shell casings?

25 A. Excuse me?

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1 Q. What are shell casings?

2 A. It's a case which contains the bullet, the primer, and the
3 projectile.

4 Q. And when a bullet is fired, what happens to the shell
5 casing?

6 A. It is ejected from -- if it's an automatic, it's ejected
7 from the weapon.

8 Q. And in your experience, if the shell casing is ejected from
9 a weapon, where does it fall?

10 A. It falls to the ground and goes up about two feet to the
11 right.

12 MS. ESPINOSA: I am now going to read another
13 stipulation between the parties, Government Exhibit S7. At
14 this time I will read portions of the stipulation.

15 It is hereby stipulated and agreed between the parties
16 that -- and Ms. Abrams please go to page 4 of the stipulation:

17 Government Exhibits 227 through 232 are true and
18 accurate copies of photographs taken by an NYPD photographer
19 during the search of a burgundy Astro Van recovered by NYPD in
20 a parking lot in the vicinity of 21-23 Hillside Avenue,
21 New York, New York, on October 2, 2014, following the murder of
22 Orlando Rivera.

23 Going back to the prior paragraph, Government Exhibits
24 204 through 226 are true and accurate copies of photographs
25 taken by a New York City Police Department crime scene

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1 photographer at the scene of the October 2, 2014 murder of
2 Orlando Rivera in the vicinity of 1653 Saint Nicholas Avenue,
3 New York, New York.

4 Government Exhibits 236 and 237 are true and accurate
5 copies of photographs taken by an NYPD photographer of items
6 recovered during the search of an apartment located at 65 Post
7 Avenue, New York, New York.

8 It is further stipulated and agreed that Government
9 Exhibits 901 through 910, 204 through 232, 236 through 237 and
10 this stipulation may be received in evidence at trial.

11 The government moves to admit Government Exhibits S7,
12 901 through 910, 204 through 232, 236 through 237 into
13 evidence.

14 MR. SCHNEIDER: No objection.

15 THE COURT: Admitted without objection.

16 (Government's Exhibits S7, 901 through 910, 204
17 through 232, 236 through 237 received in evidence)

18 MS. ESPINOSA: Ms. Abrams, you can take that down.

19 Ms. Abrams, can you please pull up for the jury,
20 Court, counsel, and the witness what is in evidence as
21 Government Exhibit 225.

22 Q. Sir, can you please describe what we are looking at in this
23 photo?

24 A. It's a photograph of the crime scene taken from Fairview
25 Avenue looking south in front of the building of 1653

1 St. Nicholas.
 2 Q. Just to make sure we are clear, the street that's directly
 3 in front of the photo, what street is that?
 4 A. That's Fairview Avenue.
 5 Q. And the other street that we can see on the left of the
 6 photo, what street is that?
 7 A. That would be Saint Nicholas Avenue.
 8 Q. Now, sir, the yellow items in the photo, what are those?
 9 A. They are crime scene evidence markers.
 10 Q. And what do they signify?
 11 A. Each number signifies a piece of evidence.
 12 Q. And Ms. Abrams, you can take that down and pull up
 13 Government Exhibit 222.
 14 Sir, what can you see in this photo?
 15 A. That's the spent shell casing. It's crime scene marker
 16 number 2. It's a little piece of paper which they use
 17 reference for scale and the case number or the run number of
 18 crime scene is written on the left-hand side.
 19 MS. ESPINOSA: Ms. Abrams, can you please pull up
 20 Government Exhibit 225 side by side.
 21 THE COURT: Before you go on, show me that last thing.
 22 What is that arrow on the piece of paper pointing to?
 23 THE WITNESS: A shell casing, fired shell casings
 24 THE COURT: I see. Thank you. So that is the piece
 25 of evidence that your people marked at that spot with a 2, is

1 that it?
 2 THE WITNESS: That's correct, your Honor.
 3 THE COURT: All right. Next.
 4 BY MS. ESPINOSA:
 5 Q. Sir, could you please point out in the photograph on the
 6 right side of the screen where that piece of evidence was
 7 recovered?
 8 A. Use my finger?
 9 Q. Yes, please.
 10 A. In the street circled number 2.
 11 Q. Let the record reflect that the witness circled number 2 on
 12 the photograph 225, Government Exhibit 225.
 13 Ms. Abrams, you can take those down, and could you now
 14 please pull up Government Exhibit 221.
 15 Sir, what can you see in this photo?
 16 A. Crime scene marker number 3. Again, that's a shell casing.
 17 Q. Ms. Abrams, would you please zoom in on the shell casing.
 18 You can take that down, and now pull up Government Exhibit 225
 19 side by side with 223. I apologize, that was 221 side by side
 20 with 225.
 21 Sir, could you please circle with your finger in the
 22 photograph on the left where this piece of evidence was
 23 recovered?
 24 A. Again, I'm going to circle it.
 25 Q. Let the record reflect that the witness has circled number

1 3 on Government Exhibit 225.
 2 Ms. Abrams, you can take those down.
 3 Now I'm going to go quickly through a series of crime scene
 4 photos that are already in evidence. Ms. Abrams can you please
 5 pull up Government Exhibit 220.
 6 Sir, what piece of evidence is in this photo?
 7 A. That's crime scene marker number 4 and, again, that's a
 8 shell casing.
 9 Q. All right. Thank you. You can take that down.
 10 Please pull up Government Exhibit 219.
 11 Sir, what piece of evidence is in this photo?
 12 A. It's crime scene evidence marker number 5 and, again,
 13 that's a shell casing.
 14 Q. You can take that down.
 15 Ms. Abrams, can you please pull up Government Exhibit 216.
 16 Sir, what piece of evidence is in this photo.
 17 A. Hard to see the number of but I'm pretty sure it is crime
 18 scene number 8 marker, and it's a shell casing.
 19 Q. You can take that down.
 20 Ms. Abrams, can you please pull up Government Exhibit 215.
 21 Sir, what piece of evidence is in this photo?
 22 A. Crime scene marker number 9, and it's a shell casing.
 23 Q. You can take that down, please.
 24 Ms. Abrams, please pull up Government Exhibit 214.
 25 Sir, what piece of evidence is shown in this photo?

1 A. Crime scene evidence marker 10 and, again, it's a shell
 2 casing.
 3 Q. Ms. Abrams, can you please take that down and pull up
 4 Government Exhibit 213.
 5 Sir, what piece of evidence is shown in this photo?
 6 A. It's crime scene marker number 11. It's a shell casing.
 7 Q. Ms. Abrams, you can take that down and please pull up
 8 Government Exhibit 212.
 9 Sir, what piece of evidence is in this photo?
 10 A. It's crime scene marker number 12 and it's a shell casing.
 11 Q. Ms. Abrams you can take that down. Please pull up
 12 Government Exhibit 211.
 13 Sir, what evidence can you see in this photo?
 14 A. It's a shell casing and it's crime scene marker number 13.
 15 Q. And Ms. Abrams, can you please take that down and pull up
 16 Government Exhibit 210.
 17 Sir, what piece of evidence can you see in this photo?
 18 A. Crime scene number 14 marker and it's a shell casing.
 19 Q. Ms. Abrams, can you take that down and pull up Government
 20 Exhibit 217.
 21 Sir, what can you see in this photo?
 22 A. It's a crime scene marker number 7. It appears to be a
 23 deformed projectile with a bullet part.
 24 Q. Ms. Abrams, can you please pull up Government Exhibit 225
 25 side by side with Government Exhibit 217.

1 Sir, can you please circle with your finger on the photo on
2 the right where this piece of evidence was recovered?

3 A. On the sidewalk. You want me to circle it?

4 Q. Yes.

5 Let the record reflect that the witness has circled
6 number 7 on Government Exhibit 225.

7 Sir, what is a deformed bullet?

8 A. That's a projectile that comes out with a shell casing.

9 Q. Is that after a bullet has been fired?

10 A. That's been fired, yeah.

11 Q. Ms. Abrams, can you take that down and please pull up
12 Government Exhibit 209.

13 Sir, what evidence is shown in this photo?

14 A. Crime scene marker number 15. This shows partial -- part
15 of a deformed projectile.

16 Q. And could you please remind us what you mean by projectile ?

17 A. It's the bullet, the part that comes out of the shell
18 casing.

19 Q. Ms. Abrams, you can take that down and can you please pull
20 up Government Exhibit 205.

21 Sir, what piece of evidence can you see in this photo?

22 A. That's crime scene marker number 19. It appears to be,
23 again, different type of alloy used, but it appears to be a
24 spent -- deformed projectile, a bullet.

25 Q. Ms. Abrams, you can take that down.

1 Sir, did NYPD test the shell casing and bullet fragments
2 for DNA that were recovered from this crime scene ?

3 A. I'm not sure if they would test for DNA.

4 Q. In your experience, did NYPD typically test a shell casing
5 or bullet fragment for DNA?

6 A. In my experience the answer is no.

7 Q. And why not?

8 A. When the projectile is discharged from the shell casing,
9 the gunpowder heats up the shell casing such high heat and your
10 skin oils, the DNA would be destroyed.

11 Q. Sir, you testified that a cell phone was recovered at the
12 scene as well, right?

13 A. That's correct.

14 Q. Ms. Abrams, can you please pull up Government Exhibit 223.

15 Sir, what can you see in this photo?

16 A. It's crime scene marker number 1. It's the cell phone and
17 the cell phone battery.

18 Q. Ms. Abrams, can you please put up Government Exhibit 225
19 side by side with this exhibit. Government Exhibit 223.

20 Sir, could you please circle with your finger on the photo
21 on the right the location of where the cell phone was
22 recovered.

23 Let the record reflect that the witness has circled
24 crime scene marker 1.

25 Sir, what street is that? Can you remind us?

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1 A. Fairview Avenue.

2 Q. Was any surveillance video collected from the location of
3 the shooting?

4 A. Yes.

5 MS. ESPINOSA: Your Honor, we are about to move in to
6 playing the surveillance video, which will take some time, so
7 if you wanted to stop, this might be a good moment or we are
8 happy to keep going.

9 THE COURT: How long is the surveillance video?

10 MS. ESPINOSA: It will take a fair amount of time,
11 your Honor. It's probably another 20 to 30 minutes.

12 THE COURT: Okay. Why don't we break, ladies and
13 gentlemen. It's been a long day. It's 10 to 5 about 8 to 5
14 let's end now. It makes sense.

15 I appreciate your attention throughout the day. Keep
16 an open mind. You have just heard the beginning of the
17 testimony.

18 Please don't discuss this case amongst yourselves or
19 with anyone else. Don't do any research. Don't do any -- go
20 on social media or anything like that. Don't go Google or
21 anything.

22 When you come in tomorrow, let's have you assembled in
23 the jury deliberation room. That's where my deputy is going to
24 take you. Again, it's Courtroom 23A. Don't come into the
25 courtroom. Come into the jury assembly room, my jury

1 deliberation room, really, 23rd floor, 23A, by 9:15. Now, you
2 have to go through security, so you need to leave time to go
3 through security, and that's a busy time, naturally, around
4 9:00. We can't begin until all 15 of you are here. So please
5 be courteous to everybody. Be here by 9:15. We will begin as
6 soon as all of you are here, and I look forward to seeing you
7 by 9:15 tomorrow morning.

8 Enjoy the evening.

9 My deputy will take you to the jury room. You can
10 leave them on your chair, and my deputy will pick them up and
11 again keep them safe. Nobody else is going to look at them.

12 (Continued on next page)

(Jury not present)
 THE COURT: All right. I will see everyone tomorrow
 by 9:15.
 You may step down, sir.
 THE WITNESS: Thank you, your Honor.
 THE COURT: Thank you.
 (Adjourned to Tuesday, May 3, 2022, at 9:15 a.m.)

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